



Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert W. Corbin

December 30, 1981

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ARIZONA ATTORNEY GENERAL

Mr. John T. Hestand  
Deputy Pinal County Attorney  
Pinal County Courthouse  
Florence, Arizona 85232

Re: I81-141 (R81-166)

Dear Mr. Hestand:

We decline to review your opinion dated October 28, 1981, to the Coolidge Unified School District No. 21, addressing several questions concerning self-insurance trust established pursuant to A.R.S. § 15-382.

Sincerely,

BOB CORBIN  
Attorney General

BC:LPS:ta

ROY A. MENDOZA  
PINAL COUNTY ATTORNEY

W. ALLEN STOOKS  
CHIEF DEPUTY

JOHN T. HESTAND  
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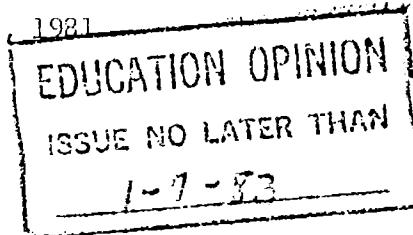
OFFICE OF THE  
**County Attorney**  
PINAL COUNTY  
FLORENCE, ARIZONA 85232

JOHN C. FELIX  
DIRECTOR, DEFERRED  
PROSECUTION PROGRAM

RAY R. VASQUEZ  
INVESTIGATOR

TELEPHONE:  
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P. O. BOX 887

October 28, 1981



11-9-81 *pc*  
LOWE

R81- 166

Mr. James N. Deaton, Assistant Superintendent  
Coolidge Unified School District No. 21  
P.O. Box 1499  
Coolidge, Arizona 85228

Dear Mr. Deaton:

You requested a County Attorney's opinion concerning self-funded insurance programs.

QUESTIONS:

1. Does the Trust have status as an independent entity to serve the purpose for which it was organized or is it an extension of the unified school district?
2. Are the revenues, liabilities and earned interest of the Trust assets and liabilities of the school district or are they proprietary to the members of the Trust?
3. May the school district Board of Education serve as the directors of the Trust or should a separate body of directors be established for the Trust?
4. Does the district have responsibility for the verification and reconciliation of the receipts and expenditures of the Trust or may that be appropriately performed by the administrative service for the Trust so long as the required external audits are performed on the Trust?
5. What statutory limitations are placed on the investment portfolio of the Trust which operates for the purpose of generating the best return on surplus uncommitted reserve funds?

OPINION:

Your first question concerns the legal status of a self-funded insurance trust. In general terms, a trust is an arrangement by which an entity or group (known as the Trustor) arranges for property to be held for the benefit of another individual or group (known as the Beneficiary). The individual

or organization who holds and manages the property is the Trustee. Within the limitations imposed by A.R.S. §15-382 (formerly A.R.S. §15-441.02) a school district's self-funded insurance trust will be a separate entity. As indicated below, the governing board of the trust is different from the governing board of the district. The trust has an existence separate from the district and is not just an extension of the district. The trust has equitable obligations to the beneficiaries and its assets may not be treated as assets of the district.

While the trust is a separate entity, it may not be totally accurate to say it is an independent entity. It is governed by the original rules set up by the governing board that created it and is subject to Arizona law. It does, however, have an existence independent of the school district.

Question two concerns the ownership of the assets of the trust. The question asks whether the assets are the property of the district or of the members of the trust. Technically, the answer is neither of the above. The assets are held by the trust for the benefit of the employees of the district. However, the assets are not truly the property of the beneficiaries. The assets can only be used for the purposes set forth in the rules governing the trust. Thus in a self insurance trust set up to provide medical insurance, the assets may be used to pay for the medical expenses of the beneficiaries but could not be used to pay a beneficiaries' legal expenses. Similarly, the school or trustor provides a portion of the funds but it may not use the funds for any reason that is not included in the trust documents and is not beneficial to the beneficiaries.

As long as the trust continues to exist and function, it has a separate existence and technical ownership of the trust's assets.

If the trust does not utilize all of its assets in a year, it may carry assets into the next year. However, if the trust is terminated and all claims against the trust have been paid, then the remainder will be used to reduce the school district's taxes for the budget year.

The third question concerns whether the Governing Board of the District may be the board of directors of the trust. The answer is no. A.R.S. §15-382(c) provides for the governing of the trust. It states:

"If a member of the governing board or employee of the school district is acting as a trustee, the trust shall be administered by at least five joint trustees of whom no more than one may be a member of the governing board and no more than one may be an employee of the school district."

While it is not required that the directors of the trust include a board member or employee, it may have a maximum of one member of each group.

Mr. James N. Deaton, Assistant Superintendent  
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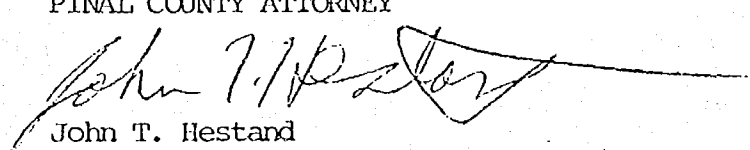
The fourth question concerns the district's obligation to verify and reconcile the receipts and expenditures of the trust. This responsibility should be conducted by the administrator of the trust who will be supervised by the directors of the trust. A.R.S. §15-382(d) requires an annual audit by an external auditor. While the Governing Board of the District should be kept aware of the general financial status of the trust, it is neither necessary nor proper for the district to interfere with the daily functioning of the trust.

The fifth question concerns statutory limitations on the forms of investment by the trust. The statute does not set up any particular restrictions on the investments a self funded trust may make. The directors are bound by their fiduciary duty to the beneficiaries of the trust. They are obligated to make investments which offer the greatest return balanced with the necessary flexibility and the maximum safety. Thus, it is not required that the trust's funds be placed with the County Treasurer for investment. However, the trust should not invest in the stock of fly-by-night Land Fraud, Inc.

Should you have any further questions, please do not hesitate to call.

Sincerely,

ROY A. MENDOZA  
PINAL COUNTY ATTORNEY



John T. Hestand  
Deputy County Attorney

JTH/mlh